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20 *[See Additional Counsel on Signature*
21 *Page]*

22 **IN THE UNITED STATES DISTRICT COURT**
23 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

24 In re SFPP Right-of-Way Claims

25 CASE NO. SACV 15-00718 JVS
26 (DFMx)

27 **MEMORANDUM OF POINTS AND**
28 **AUTHORITIES IN SUPPORT OF**
MOTION FOR APPOINTMENT
OF PLAINTIFFS' LEADERSHIP
STRUCTURE

Hearing Date: November 2, 2015

Time: 1:30 p.m.

Courtroom: 10C

Judge: Hon. James V. Selna

MEMORANDUM IN SUPPORT OF MOTION FOR APPOINTMENT OF
PLAINTIFFS' LEADERSHIP STRUCTURE
CASE NO. SACV 15-00718 JVS (DFMx)

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Pursuant to Federal Rule of Civil Procedure 23(g), Plaintiffs in the consolidated lawsuits, *Coachella Self Storage, LLC, et al. v. Union Pacific Railroad Co., et al.*, Case No. SACV 15-00718 JVS (DFMx), *Lidia Rivera, et al. v. Union Pacific Railroad Co., et al.*, Case No. 8:15-cv-01362-JVS-DFM, and *Richard Bagdasarian Inc. v. SFPP, L.P., et al.*, Case No. 8:15-cv-00986, (collectively, “Plaintiffs”), respectfully request the appointment of Norman E. Siegel of Stueve Siegel Hanson LLP (“SSH”) and John W. Cowden of Baker Sterchi Cowden & Rice, LLC (“BSCR”) as Interim Co-Lead Class Counsel, Thomas S. Stewart of Stewart, Wald & McCulley, LLC (“SWM”) as Chairman of the Plaintiffs’ Executive Committee, John T. Cu of Hanson Bridgett LLP (“HB”) as a member of the Plaintiffs’ Executive Committee, and Robert Ahdoot of Ahdoot & Wolfson, PC (“AW”) as Liaison Counsel.¹

The appointment of Interim Class Counsel at a relatively early stage in this proposed class action litigation is in the best interest of the parties, the proposed class and the Court. *See* Fed. R. Civ. P. 23(g). Although Proposed Interim Class Counsel have informally organized in an effort to coordinate the litigation before this Court, a formal appointment will provide efficiencies to the parties and the Court and will avoid uncertainty and confusion regarding who may speak for the proposed class. This is of particular importance as the Plaintiffs begin to engage in pretrial matters including the preparation of a Consolidated Amended Complaint, and meeting and conferring with Defendants on scheduling, discovery and other case management issues. In addition, appointment of interim class counsel will formally empower Plaintiffs’ attorneys to make decisions on behalf of the proposed class.

¹ Mr. Siegel, Mr. Cowden, Mr. Stewart, Mr. Cu, and Mr. Ahdoot are collectively referred to herein as “Proposed Interim Class Counsel.”

I. STRUCTURE OF THE PROPOSED APPOINTMENT

Consistent with the guidance provided by the Manual for Complex Litigation Fourth §§ 10.221 and 10.222, Plaintiffs jointly propose the following structure for the appointment of Proposed Interim Class Counsel:

Interim Co-Lead Class Counsel:

- Norman Siegel of Stueve Siegel Hanson LLP
- John Cowden of Baker Sterchi Cowden & Rice, LLC

Plaintiffs' Executive Committee:

- Chairman, Thomas Stewart of Stewart Wald & McCulley, LLC
- John T. Cu of Hanson Bridgett LLP

Plaintiffs' Liaison Counsel:

- Robert Ahdoot of Ahdoot & Wolfson, PC

II. LEGAL STANDARD FOR THE APPOINTMENT OF PRE-CERTIFICATION INTERIM CLASS COUNSEL UNDER FED. R. CIV. P. 23(g)

Federal Rule of Civil Procedure 23(g)(3) grants federal district courts authority to appoint pre-certification “interim” class counsel. *See* Fed. R. Civ. P. 23(g)(3). The 2003 Advisory Committee Notes explain that interim counsel should be appointed “if necessary to protect the interests of the putative class,” and may be appropriate in cases of “rivalry or uncertainty.” *Id.*; 2003 Advisory Committee Notes. “Appointment of interim class counsel during the pre-certification period may be appropriate, as ‘it will usually be important for an attorney to take action to prepare for the certification decision.’” *Chacanaca v. Quaker Oats Co.*, No. C 10-0502 RS, 2011 U.S. Dist. LEXIS 65023, at *5-6 (N.D. Cal. June 14, 2011) (quoting Advisory Committee Note to Rule 23(g)(2)(A) (2003 amendments)).

1 “This is particularly true in a situation where there are a ‘number of
 2 overlapping duplicative, or competing suits pending in other courts, and some or
 3 all of those suits may be consolidated, [and] a number of lawyers may compete for
 4 class counsel appointment.’” *Id.* at *6 (quoting Manual for Complex Litigation
 5 Fourth § 21.11 (2004)). “‘In such cases, designation of interim counsel clarifies
 6 responsibility for protecting the interests of the class during precertification
 7 activities.’” *Id.*; *see also White v. TransUnion, LLC*, 239 F.R.D. 681, 683 (C.D.
 8 Cal. 2006); *Bernal v. Netflix, Inc.*, No. 5:11-cv-00820 EJD, 2011 U.S. Dist. LEXIS
 9 89903, at *7-11 (N.D. Cal. Aug. 12, 2011); *Douglas v. Haier Am. Trading, LLC*,
 10 No. 5:11-cv-02911 EJD (PSG), 2011 U.S. Dist. LEXIS 91695, at *3-5 (N.D. Cal.
 11 Aug. 17, 2011). Moreover, the Manual for Complex Litigation encourages self-
 12 ordering as counsel have done here. *See* Manual for Complex Litigation Fourth §
 13 10.22.²

14 Fed R. Civ. P. 23(g)(2) provides that interim counsel can be appointed if that
 15 counsel is adequate under the Rule 23(g)(1) factors, and will “fairly and adequately
 16 represent the interests of the class” under Rule 23(g)(4). The Court must determine
 17 whether the applicants are “able to provide the representation called for by
 18 paragraph (1)(B) in light of the factors identified in paragraph (1)(C).” *Id.*

19 _____
 20 ² On July 1, 2015, 8 weeks after Proposed Interim Class Counsel began filing the
 21 actions now consolidated here, attorney Frank Bottini filed *Monica Rodriguez*
 22 *Elpidio, et al. v. Union Pacific Railroad Company, et al.*, No. 3:15-cv-03071-PJH
 23 (N.D. Cal.) (“*Elpidio* Action”). On September 18, 2015, the *Elpidio* Action was
 24 transferred to the Central District. *See Elpidio* Action, Doc. No. 32. Despite the
 25 comparatively late filing of *Elpidio*, and as part of their efforts to organize the
 26 litigation, Proposed Interim Class Counsel sought to include Mr. Bottini as a
 27 member of the proposed Executive Committee. Mr. Bottini declined. *See*
 Declaration of Norman E. Siegel (hereinafter “Siegel Dec.”) at ¶ 16. Nevertheless,
 should this Court grant this Motion, Proposed Interim Class Counsel intend to call
 on Mr. Bottini to assist in the litigation on an as needed basis at the direction of
 Interim Co-Lead Class Counsel.

1 In evaluating adequacy under Rule 23(g)(1)(B), the Court looks to the
2 factors identified in paragraph (1)(A):

3 (1) the work counsel has done in identifying or investigating potential claims
4 in the action;

5 (2) counsel's experience in handling class actions, other complex litigation,
6 and the types of claims asserted in the action;

7 (3) counsel's knowledge of the applicable law; and

8 (4) the resources that counsel will commit to representing the class.

9 Fed. R. Civ. P. 23(g)(1)(A).

10 Beyond the four considerations set forth in Rule 23(g)(1)(A), the Court
11 "may consider any other matter pertinent to counsel's ability to fairly and
12 adequately represent the interests of the class." Fed. R. Civ. P. 23(g)(1)(B); *see*
13 *White v. Experian Info. Solutions*, 993 F. Supp. 2d 1154, 1170 (C.D. Cal. 2014).

14 This case satisfies all of the criteria for the appointment of pre-certification
15 interim class counsel. There are presently "overlapping, duplicative, or competing
16 suits" filed by different sets of counsel which involve the rights of the very same
17 California property owners.

18 **III. NATURE OF THE LITIGATION**

19 Defendants SFPP, L.P., Kinder Morgan Operating L.P. "D," and Kinder
20 Morgan G.P., Inc. operate a subterranean petroleum pipeline that runs beneath the
21 rights-of-way of Defendant Union Pacific Railroad Company through six Western
22 States, including California, Arizona, New Mexico, Nevada, Oregon, and Texas.
23 Several Plaintiffs separately filed initial complaints, now consolidated before this
24 Court, on behalf of a putative class of persons who own real property that abuts the
25 railroad right-of-way and the below-ground pipeline, and which includes the
26 subsurface of the railroad right-of-way. Plaintiffs allege that for nearly five
27

decades, Union Pacific has purported to lease an easement in the subsurface to the operators of the pipeline (various affiliates of Kinder Morgan), and has collected and attempted to collect more than \$200 million in rents for the pipeline's use of the subsurface of the railroad's right-of-way.

Several federal and state court decisions have held that railroads like Union Pacific do not own the subsurface beneath their rights-of-way and have no legal right to commercially profit from the use of the subsurface for non-railroad purposes. These significant legal rulings include a 2014 ruling from the United States Supreme Court regarding railroad rights-of-way, and a November 5, 2014 appellate decision of the California Court of Appeals for the Second Appellate District that held, specifically with respect to the pipeline at issue in this action, that Union Pacific did not hold fee title to the majority of its right-of-way and has no legal right to "lease" the subsurface to the pipeline or to collect rents for such use. Instead, the fee owners of the adjacent real property own the subsurface below the railroad's right-of-way. This action is an attempt to recover for the putative class unpaid rents, damages, and equitable relief associated with the Defendants' trespass upon the Plaintiffs' real property and wrongful occupation of the same without due compensation.

IV. PROPOSED INTERIM CLASS COUNSEL'S QUALIFICATIONS

A. Work Performed in Investigating Potential Claims in the Action

Proposed Interim Class Counsel have comprehensively investigated the potential claims in these actions. In March, an attorney with the BSCR firm traveled to California for the first review of the appellate and trial records associated with the Rent Action,³ and reviewed more than 3,000 pages of records.

³ The "Rent Action" refers to the lawsuit filed by Union Pacific to collect rents from the Kinder Morgan defendants for the operation of the subsurface pipeline, captioned *Union Pacific Railroad Co. v. Santa Fe Pacific Pipelines, Inc., et al.*,

1 See Declaration of John W. Cowden (hereinafter “Cowden Dec.”) at ¶ 8. Since
 2 then SWM has analyzed between 25,000 and 30,000 pages of appellate records and
 3 trial transcript. See Siegel Dec. at ¶ 12. The BSCR, SSH, and SWM firms
 4 commenced legal research and historical investigation regarding the various 19th
 5 Century railroads to whose rights Union Pacific has succeeded, the history of
 6 railroad development in the West, land patents and various other historical land
 7 title investigations, and research into the corporate histories of the defendants. See
 8 Cowden Dec. at ¶ 8; Siegel Dec. at ¶ 12. Proposed Interim Class Counsel include
 9 the firms who were first to file suit on behalf of California landowners.

10 Over the course of two months, the BSCR, SWM, SSH, and HB firms
 11 conducted “town hall” meetings in California and in every state implicated by
 12 these claims. See Cowden Dec. at ¶ 9; Siegel Dec. at ¶ 12. Proposed Interim Class
 13 Counsel have also researched and reviewed real property data and interacted with
 14 local county assessors in 24 California counties to identify potential class
 15 members. See Cowden Dec. at ¶ 9; Siegel Dec. at ¶ 12. Proposed Interim Class
 16 Counsel’s investigation has been thorough, meticulous, and original.

17 As of the date of this filing, Proposed Interim Class Counsel collectively
 18 represent over 150 putative class members. See Cowden Dec. at ¶ 10; Siegel Dec.
 19 at ¶ 12. Proposed Interim Class Counsel have already invested well in excess of
 20 3,000 hours of attorney and paralegal time prosecuting claims against Defendants.
 21 See Cowden Dec. at ¶ 10; Siegel Dec. at ¶ 12.

22 Additionally, Proposed Interim Class Counsel have already established case
 23 management protocols, including dividing labor to avoid duplication of tasks and
 24 implementing uniform time-keeping standards. See Siegel Dec. at ¶ 17. By
 25

26 case no. BC 319170, Los Angeles Superior Court, *aff’d in part and rev’d in part*,
 27 231 Cal. App. 4th 134 (Cal. App. 2d Dist. 2014).

1 agreeing to case management protocols, Proposed Interim Class Counsel are
2 efficiently and comprehensively litigating the important issues in this lawsuit.

3 A particularly challenging aspect of the investigation of these claims has
4 been identifying the locations of the pipeline. *See* Cowden Dec. at ¶ 11. Publicly-
5 available records of the location of the pipeline buried within Union Pacific's
6 right-of-way are limited, and reconstructing the path of the pipeline within the
7 right-of-way poses particular challenges. *See id.* Proposed Interim Class Counsel
8 recognized, however, that identifying the location of the pipeline within Union
9 Pacific's right-of-way was critical to developing and analyzing the putative class
10 members' claims, and identifying these class members, including representative
11 named plaintiffs for the class. *See id.* A significant barrier to accurately identifying
12 the location of the pipeline is that the pipeline does not run continuously within
13 Union Pacific's right-of-way. *See id.* at ¶ 12. The pipeline occupies 496
14 fragmented segments which are located intermittently throughout the Union Pacific
15 corridor. *See id.* These fragmented segments range in size from a simple track
16 crossing to a 71.8 mile segment. *See id.*

17 As part of their investigation, Proposed Interim Class Counsel have
18 investigated and continue to investigate the extent and origins of Union Pacific's
19 right-of-way, including historical records, records developed in prior litigation
20 between and among the defendants (including maps and not-to-scale line
21 drawings), federal pipeline mapping data, GPS coordinates of railroad mileposts,
22 and other relevant documentation and testimony. *See id.* at ¶ 13. The depth and
23 breadth of Proposed Interim Class Counsel's investigation fully satisfies the
24 criteria for appointment of Proposed Interim Class Counsel as interim class
25 counsel.

B. Experience in Handling Class Actions, Other Complex Litigation, and the Types of Claims Asserted in the Action, and Knowledge of the Applicable Law

Proposed Interim Class Counsel have broad and extensive experience in handling class actions, federal court MDL proceedings, federal court collective actions, and other complex actions, as well as the types of claims asserted in this action. Proposed Interim Class Counsel also have thorough and unparalleled knowledge of the applicable law. Proposed Interim Class Counsel bring to bear experience that is unique and critical to this case.

Attorneys Norman Siegel, Jason Hartley, Barrett Vahle, and Ethan Lange of SSH have worked on this litigation since its inception, and have extensive, nationwide experience in class actions and other complex litigation. SSH is an AV® rated law firm with 31 lawyers in offices in California, Missouri, and New York. *See* Siegel Dec. at ¶¶ 1 & 3. All of SSH's lawyers are dedicated to the practice of litigation full time. *See id.* at ¶ 3. The firm is made up of trial lawyers that have practiced at large law firms or served as government lawyers or state or federal law clerks. *See id.* The firm is able to call upon a deep bench of experienced partners and associates, many of whom are former state or federal law clerks, including four former United States Circuit Court of Appeals clerks, six former United States District Court clerks, one former state Supreme Court clerk, and two former state Court of Appeals clerks. *See id.* The firm has a nationwide practice that focuses on complex commercial and class litigation and trials. *See id.* at ¶ 4. The firm has been recognized by courts throughout the country for its ability and experience in handling major complex litigation, including class actions and MDLs. *See id.* at ¶ 6.

1 Proposed Interim Co-Lead Counsel Norman E. Siegel is a founding partner
 2 of SSH with expansive experience in multi-district and complex litigation. *See id.*
 3 at ¶ 1. Mr. Siegel and SSH have been appointed to the leadership of multi-district
 4 proceedings or as lead counsel pursuant to Rule 23(g) in federal actions from
 5 coast-to-coast.⁴ *See id.* at ¶ 7. Mr. Siegel has also served as lead counsel in class
 6 actions litigated in this Court, including *Parkinson v. Hyundai Motor America*, 796
 7 F. Supp. 2d 1160 (C.D. Cal. 2010) (serving as co-lead counsel in case alleging
 8 Hyundai sold vehicles with defective flywheel systems; in describing settlement
 9 the Hon. Alicemarie Stotler held: “the benefit obtained for the class is quite
 10 favorable . . . and the claims process has been made strikingly simple.”) and *Roy v.*
 11 *Hyundai Motor America*, No. 05-CV-0483-AHS (C.D. Cal. 2006) (serving as co-
 12 lead counsel in case alleging passenger side airbag sensors did not recognize
 13 smaller adults; court held that the settlement, which included recalibration of the
 14

15 ⁴ Recent federal appointments include but are not limited to: *In re: Syngenta AG*
 16 *MIR 162 Corn Litig.*, No. 14-md-02591 (D. Kan.), *In re: Pre-Filled Propane Tank*
 17 *Antitrust Litig.*, No. 14-md-0567 (W.D. Mo.); *In re: Target Corp. Customer Data*
 18 *Security Breach Litig.*, MDL No. 2522 (D. Minn.); *In re: The Home Depot, Inc.,*
 19 *Customer Data Security Breach Litig.*, 1:14-md-02583-TWT (N.D. Ga.); *In re:*
 20 *Simply Orange Juice Mktg. and Sales Practices Litig.*, MDL No. 2361 (W.D. Mo.);
 21 *In re: Bank of America Wage and Hour Employment Practices Litig.*, 2:12-cv-
 22 08681 (D. Kan.); *In re: Peregrine Financial Group Customer Litig.*, No. 1:12-cv-
 23 5546 (N.D. Ill.); *Leiszler, et al v. Align Technologies*, No. 3:10-CV-2010 (N.D.
 24 Cal.); *In re Aftermarket Automotive Lighting Prods. Antitrust Litig.*, No. 2:09-ML-
 25 2007 (C.D. Cal.); *Zeisner, et al. v. Linens-N-Things*, No. 06-CV-1194 (S.D. Cal.);
 26 *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig.*, No.
 27 1:05-MD-1720 (E.D.N.Y.); *Fond du Lac Bumper v. Gordon.*, No. 2:09-CV-0852
 (E.D. Wis.); *In Re: H&R Block, Inc., Express IRA Mktg. Litig.*, No. 4:06-MD-
 01786 RED (W.D. Mo.); *In re: Pre-Filled Propane Tank Mktg. and Sales*
Practices Litig., No. 4:09-MD-02086 (W.D. Mo.); *Khaliki v. Helzberg Diamond*
Shops, No. 4:11-CV-00010-NKL (W.D. Mo.); and *In re Urethanes Antitrust Litig.*,
 No. 2:04-MD-1616-JWL (D. Kan.). *See* Siegel Dec. at ¶ 7.

1 air bag sensor, was a “win- win” for the parties). *See id.* at ¶ 8. Additionally, Mr.
2 Siegel has extensive experience in property rights and trespass cases including as
3 lead counsel in *Henry, et al. v. The Dow Chemical Co.*, Case No. 03-47775-NZ
4 (Saginaw County, Michigan), where he represents hundreds of property owners
5 related to The Dow Chemical Company’s pollution of the Tittabawassee River,
6 and in *Sparks, et al. v. The Premcor Refining Co.*, Case No. 03-L-1053 (Madison
7 County, Illinois) where he recovered \$40 Million for residents of the village of
8 Hartford, Illinois in litigation involving an underground gas plume caused by
9 leaking pipelines. *See id.* at ¶ 10.

10 Proposed Interim Co-Lead Counsel John W. Cowden of BSCR is a former
11 Assistant Attorney General of the state of Missouri, and has been an active trial
12 lawyer for over 35 years. *See* Cowden Dec. at ¶ 3. He is a Fellow of the American
13 College of Trial Lawyers, and has been recognized by the Kansas City
14 Metropolitan Bar Association as a Dean of the Trial Bar. *See id.* Mr. Cowden has
15 represented clients in a variety of consumer class actions in the automotive,
16 pharmaceutical, consumer credit, and telecommunications industries; in an
17 employment class action in the airline industry; in MDL proceedings in the aircraft
18 and medical devices industries; and in other consolidated proceedings in the
19 automobile and airline industries. *See id.* at ¶ 4. He has also represented clients in
20 cases involving land use, including a lawsuit alleging chemical contamination of
21 ground water, and a coverage dispute involving landowners’ rights where a
22 telecommunications company had installed fiber optic cable along railroad rights-
23 of-way. *See id.*

24 Proposed Executive Committee Chair Thomas S. Stewart and the lawyers
25 comprising SWM have handled numerous property rights class actions. *See*
26 *generally* Siegel Dec. at ¶ 15 & its Ex. B; <http://www.swm.legal>. They have
27

1 obtained settlements of over \$225 million on behalf of property owners, and
2 personally settled nearly all of the largest “rails-to-trails” cases to date, including
3 the largest such case in history. *See id.* They have successfully represented
4 property owners in California as well as many other states. *See id.* Additionally,
5 SWM’s lawyers have represented thousands of private landowners in similar cases
6 as the present lawsuit and are currently handling approximately 50 “rails-to-trails”
7 cases, including handling the vast majority of such cases currently pending in the
8 Court of Federal Claims in Washington, D.C. *See id.* The current lawsuit involves
9 claims relating to railroad property rights, an area of the law SWM is intimately
10 familiar with given its lawyers’ primary focus on “rails-to-trails” litigation. *See id.*
11 With their extensive experience in large, complex cases such as this, SWM is well-
12 qualified to represent the putative class members. *See id.*

13 Attorneys Thomas Stewart, Elizabeth McCulley, and Steven Wald of SWM
14 and J. Robert Sears of BSCR are preeminent experts in litigating landowner claims
15 with regard to property rights along railroad rights-of-way, including extensive
16 experience with dozens of “rails-to-trails” cases seeking compensation for
17 landowner classes. *See* Cowden Dec. at ¶ 5. Attorneys for SWM have been
18 designated class counsel in twenty-one “rails-to-trails” cases. *See generally* Siegel
19 Dec. at ¶ 15 & its Ex. B. Both the BSCR and SWM firms maintain a “rails-to-
20 trails” practice group, which litigates the rights of property owners adjacent to
21 railroad rights of way that have been abandoned by the railroads and converted to
22 recreational use without compensation to the adjacent fee owners. *See* Cowden
23 Dec. at ¶¶ 5-6.

24 Proposed Executive Committee Member John T. Cu and attorneys with HB
25 are experienced in litigating complex class action, real property, and land use cases
26 throughout California. *See generally* Cowden Dec. at ¶ 14 & its Ex. B. In addition,
27

1 the firm has unparalleled expertise in the railroad industry, having served as
2 general counsel to the Peninsula Corridor Joint Powers Board (“JPB”), which
3 operates the Caltrain commuter rail service in the San Francisco Bay Area, since
4 its inception more than twenty years ago. *See id.* The firm served as lead counsel
5 for JPB in its acquisition of the railroad right-of-way from Southern Pacific, which
6 at the time was one of the largest real estate transactions in the history of the state
7 of California. *See id.* As General Counsel to JPB and Caltrain, HB has acquired
8 extensive experience with railroad rights-of-way and has been involved in all
9 aspects of the creation and operation of a commuter rail property in Northern
10 California. *See id.*

11 Mr. Cu is also an experienced trial lawyer with significant jury trial
12 experience. *See* Cowden Dec. at ¶ 14 & its Ex. B. He has extensive complex
13 litigation experience in the areas of contracts, real estate, unfair competition,
14 business torts, trade secrets, and products liability. *See id.* Mr. Cu also has
15 experience litigating environmental, toxic tort, subrogation, and contribution
16 disputes in insurance coverage cases. *See id.* Prior to joining HB, Mr. Cu served as
17 a deputy district attorney for Contra Costa County, where he served as trial
18 supervisor for the municipal trial team for the Western Criminal Division of Contra
19 Costa County. *See id.*

20 Proposed Liaison Counsel Robert Ahdoot is a highly skilled litigator who
21 has extensive class action experience. *See generally* Siegel Dec. at ¶ 15 & its Ex.
22 C. Mr. Ahdoot and AW have been appointed to the leadership of multi-district
23 proceedings or as lead counsel pursuant to Rule 23(g) in many federal actions in
24 the following actions, including: *Chimeno-Buzzi v. Hollister Co., et al.*, Case No.
25 1:14-cv-23120-MGC (S.D. Fla.); *Pappas v. Naked Juice Co. of Glendora, Inc.*,
26 Case No. 2:11-cv-8276-JAK-PLA (C.D. Cal.); *Carey v. New Balance Athletic*

1 *Shoe, Inc.*, Case Nos. 1:11-cv-10632-LTS & 1:11-cv-10001-LTS (D. Mass.); *West*
 2 *v. ExamSoft Worldwide Inc.*, Case No. 14-cv-22950-UU (S.D. Fla.); *In Re: Hain*
 3 *Celestial Seasonings Products Consumer Litig.*, Case No. 13-cv-01757-AG-AN
 4 (C.D. Cal.); *In re: Whole Foods Market, Inc., Greek Yogurt Marketing and Sales*
 5 *Practices Litig.*, Case No. 1:14-MC-02588-SS (W.D. Tex.); *In re: Premera Blue*
 6 *Cross Customer Data Sec. Breach Litig.*, Case No. 15-md-02633-SI (D. Or.);
 7 *Remijas, et al. v. Neiman Marcus Group, LLC*, Case No. 14-cv-1735 (N.D. Ill.);
 8 *The Home Depot, Inc., Customer Data Security Breach Litig.*, Case No. 1:14-md-
 9 02583-TWT (N.D. Ga.). *See id.* In addition, Mr. Ahdoot and AW maintain an
 10 office in this District, which will assist the Court and parties in managing
 11 procedural and logistical activities in this matter. *See id.*

12 As shown above, Proposed Interim Class Counsel are exceptionally well-
 13 qualified to shepherd this litigation.

14 **C. Counsel Have Committed and Will Continue to Commit**
 15 **Substantial Resources to Representing the Class**

16 Proposed Interim Class Counsel's combined extensive experience in
 17 bringing and defending complex cases and class actions such as this one
 18 demonstrates that Proposed Interim Class Counsel fully understand the substantial
 19 investment of time and resources necessary to pursue and lead this litigation, and
 20 these firms are committed to making the necessary investment. As noted above,
 21 Proposed Interim Class Counsel have already devoted more than 3,000 hours of
 22 attorney and paralegal time to investigating and advancing litigation against
 23 Defendants. Proposed Interim Class Counsel have assembled a team of experts
 24 consisting of the three most experienced appraisers in Trails Act takings cases, one
 25 of the most preeminent mapping firms in the country, and a railroad title expert
 26 with over 35 years of experience evaluating title issues with respect to railroads.

1 *See* Siegel Dec. at ¶ 12. Proposed Interim Class Counsel have the resources and the
2 commitment to serve as class counsel.

3 Proposed Interim Co-Lead Counsel Norman E. Siegel and SSH are willing
4 and able to commit to this litigation, however long it takes to resolve. *See* Siegel
5 Dec. at ¶ 13. Few of SSH's cases resolve quickly, and SSH is accustomed to cases
6 that require multi-year investments and significant labor. *See id.* Although the firm
7 is committed to efficient resolution of all disputes, it is not unusual for SSH to
8 invest thousands of hours in its cases in pursuit of a positive result for its clients.
9 *See id.* Just in the past few years the firm has spent nearly 30,000 hours litigating a
10 complex, multi-party antitrust suit on behalf of grocers and wholesalers against egg
11 producers and industry trade groups; nearly 25,000 hours litigating a consumer
12 class case for economic damages against a pharmaceutical company; and over
13 15,000 hours litigating a multi-district collective action under 29 U.S.C. § 216(b)
14 against a national bank. *See id.* Regarding the latter case, the MDL court observed
15 that "[t]he number of hours spent on the litigation by plaintiffs' counsel—all of
16 whom are highly skilled and experienced in the subject area—verifies the
17 significant time and labor required by this MDL."⁵ *See id.*

18 Proposed Interim Co-Lead Counsel John W. Cowden is prepared to commit
19 to this case. BSCR is a substantial firm, specializing in litigation, with 29 lawyers,
20 which has already committed substantial resources to this case, and has every
21 intention of continuing to do so. *See* Cowden Dec. at ¶¶ 1, 5-7 & 15. BSCR is no
22 stranger to litigation of this type, and has represented landowner plaintiffs in a
23 multitude of "rails-to-trails" lawsuits spanning a period of 6 years. *See id.* at ¶ 5.

26 ⁵ *In re: Bank of America Wage And Hour Employment Practices Litig.*, No. 10-
27 MD-2138, Dkt. No. 653, at 7 (D. Kan. Dec. 13, 2013).

1 The “rails-to-trails” litigation has had BSCR’s consistent and robust support, and
2 the current pipeline litigation will receive similar support from BSCR. *See id.*

3 Proposed Executive Committee Chair Thomas S. Stewart and SWM’s
4 proven track record in the “rails-to-trails” arena demonstrates their ability and
5 willingness to commit the necessary resources, including expertise and time, to
6 push this lawsuit forward to conclusion. *See generally* Siegel Dec. at ¶ 15 & its Ex.
7 B; <http://www.swm.legal>. Similarly, Proposed Executive Committee Member John
8 T. Cu is supported by HB, which is one of the largest firms in Northern California,
9 and has contributed significant resources to this litigation and will continue to do
10 so. *See* Cowden Dec. at ¶ 14. Likewise, Proposed Liaison Counsel Robert Ahdoot
11 and AW have proven time and time again that they will commit the necessary
12 resources and efforts to best represent the interests of the class. *See generally*
13 Siegel Dec. at ¶ 15 & its Ex. C.

14 Proposed Interim Class Counsel have strong systems and information
15 technology capabilities, and each has a dedicated team of litigation support
16 specialists to assist their clients and attorneys during discovery, pretrial and trial,
17 thus ensuring the necessary technological support for this litigation. *See* Cowden
18 Dec. at ¶ 15; Siegel Dec. at ¶ 11. The firms utilize advanced information
19 technology platforms to manage everything from document storage and retrieval,
20 to electronic discovery and the encryption of personal mobile devices. *See* Cowden
21 Dec. at ¶ 15; Siegel Dec. at ¶ 11. The firms use managed services, lessening the
22 need for extensive computer hardware infrastructures and the staffing hours needed
23 to maintain a traditional office-based system. *See* Cowden Dec. at ¶ 15; Siegel
24 Dec. at ¶ 11. This software delivery model allows the firms’ attorneys to securely
25 access and work with information from a computer or mobile device from
26 anywhere. *See* Cowden Dec. at ¶ 15; Siegel Dec. at ¶ 11. The firms also utilize

1 host-based e-discovery applications offered by a variety of vendors to manage the
 2 document review process with efficiency, saving valuable time and money. *See*
 3 Cowden Dec. at ¶ 15; Siegel Dec. at ¶ 11.

4 **V. CONCLUSION**

5 For all of the foregoing reasons, the Court should grant this Motion pursuant
 6 to Rule 23(g) for the appointment of Plaintiffs' leadership structure; and should
 7 appoint Norman E. Siegel of Stueve Siegel Hanson LLP and John W. Cowden of
 8 Baker Sterchi Cowden & Rice, L.L.C. as Interim Co-Lead Class Counsel, Thomas
 9 S. Stewart of Stewart, Wald & McCulley, LLC as the Chairman of the Plaintiffs'
 10 Executive Committee, John T. Cu of Hanson Bridgett LLP as a member of the
 11 Plaintiffs' Executive Committee, and Robert Ahdoot of Ahdoot & Wolfson, PC as
 12 Liaison Counsel. A proposed order, consistent with the guidelines set forth in the
 13 Manual for Complex Litigation, has been separately provided for the Court's
 14 consideration.

15
 16
 17 DATED: September 24, 2015

Respectfully submitted,

18 /s/ Norman E. Siegel

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21 Ethan M. Lange

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Susan Wells Revocable Trust, and
Charles Serrano and Barbara Sloan
as trustees of the Charles Serrano and
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/s/ John T. Cu

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1 ATTESTATION

2 I attest that all signatories above, on whose behalf the filing of this document
3 is submitted, concurred regarding this document's contents and have authorized the
4 filing.

5 /s/ Norman E. Siegel
6 Norman E. Siegel

7 CERTIFICATE OF SERVICE

8 I HEREBY CERTIFY that on the 24th day of September, 2015, I filed the
9 foregoing electronically through the CM/ECF system, which caused all counsel of
10 record to be served by electronic means pursuant to Local Civil Rule 5-3.2, as
11 more fully reflected on the Notice of Electronic Filing.

12 /s/ Norman E. Siegel
13 Norman E. Siegel